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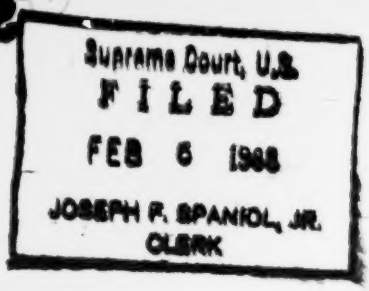

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

MORETON ROLLESTON, JR.

Petitioner,

Vs.

JUDGE FRANK M. ELDRIDGE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATE COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

Moreton Rolleston, Jr.
2604 First Nat'l Bk Twr
Atlanta, Georgia 30383
Pro Se (404)658-1228

QUESTIONS PRESENTED FOR REVIEW

1.

Can the Attorney General of Georgia represent a private individual in a civil action?

2.

Can the Attorney General of Georgia represent a state judge in a civil action for damages?

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PETITION FOR A WRIT OF CERTIORARI

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Petitioner, Moreton Rolleston, Jr. respectfully prays that a writ of

certiorari issue to review the judgment of the U.S. Court of Appeals for the Eleventh Circuit entered in this case on November 17, 1987.

OPINION BELOW

The option of the U.S. Court of Appeals for the Eleventh Circuit has not been reported. The opinion, dated November 17, 1987, is set forth in full in the Appendix A-1.

The decision denied Rolleston's Motion to Disqualify Eldridge's Counsel.

JURISDICTION

The opinion of the U.S. Court of Appeals for the Eleventh Circuit was issued and entered on November 17, 1987. The jurisdiction of this court is envoked under 28 U.S.C. §1254

STATUTES INVOLVED

1.

Article V, §III, ¶ IV, of the Constitution of the State of Georgia.

2.

Official Code of Georgia (OCGA) 45-15-3, 45-15-20, 45-15-30 and 45-15-34.

STATEMENT OF CASE

Petitioner (Rolleston) filed in the U.S. District Court, for the Northern District of Georgia, Atlanta Division, a complaint for declaratory judgment and damages. Respondent (Eldridge) was named as Defendant. Eldridge is a Judge of the Fulton Superior Corut of Georgia. Eldridge was elected by the voters of Fulton County and Atlanta, Georgia.

The original complaint alleged denial of equal protecton of the law and of due process as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States and as guaranteed by the Constitution of the State of Georgia. The complaint also alleged that the acts of Eldridge are in violation of 42 USC §1983 and that said acts have resulted in damages to Rolleston. Rolleston also moved for a default judgment. The District Court denied the Motion for Default Judgment and granted Eldridge's Motion to Dismiss on the grounds that Eldridge was protected by the doctrine of judicial immunity. Rolleston filed an appeal in the U. S. Court of Appeals for the Eleventh

Circuit from the Order of the District Court. Said Court of Appeals has not entered any order in that appeal.

After the above described appeal had been docketed in the Court of Appeals, Rolleston filed in the Court of Appeals a Motion to Disqualify Counsel for Eldridge. That Motion was denied and forms the basis for this petition for certiorari.

WE CONTEND that the Attorney General of Georgia is the legal advisor of the Executive Branch of State Government and that he can not represent an individual client and can not represent the Judicial Branch of the State of Georgia.

Article V, Section III, Paragraph IV of the Constitution of the State of Georgia provides as follows:

"The Attorney General shall act as the legal advisor of the Executive Department, shall represent the state in the Supreme Court in all capital felonies and in all civil and criminal cases in any court when required by th Governor, and shall perform such other duties as shall be required by law."

OCGA 45-15-3 describes the duties of the Attorney General as follows:

"It is the duty of the Attorney General:

(1) When required to do so by the Governor, to give his opinion in writing, or otherwise on any question of law connected with the interest of the state or with the duties of any of the departments;

(2) When he deems it advisable, to prepare all contracts and writings in relation to any matter in which the state is interested;

(3) When required to do so by the Governor, to participate in, on behalf of the State, all criminal actions in any court of competent jurisdiction when the district attorney thereof is being prosecuted, and all other criminal or civil actions to which the state is a party.

(4) To act as the legal advisor of the executive branch;

(5) To represent the state in all capital felony actions before the Supreme Court;

(6) To represent the state in all civil actions tried in any court; and

(7) To perform such other services as shall be required of him by law."

OCGA 45-15-30 provides in part as follows:

"Neither the Attorney General nor any other attorney at law employed full time by the Department of Law shall engage in the private practice of law during his term of appointment."

OCGA 45-15-20 provides in part as follows:

"If the Attorney General shall charge, demand or receive any fee, prequisite, or compensation, other than his salary, in any case in which the state shall be a party or in any manner interested, he shall be guilty of a felony and, upon conviction thereof, shall be punished by

imprisonment for not less than two nor more than 20 years, shall be removed from office, and shall be forever disqualified from holding any office in this state."

In this case, the Attorney General of Georgia is representing Eldridge as a Defendant in a civil suit and has demanded attorneys fees by their motion in court.

The acts complained of in the original complaint were actions by Eldridge in his capacity as Judge in the Fulton Superior Court. There is no provision of law in Georgia for the Attorney General to represent a state judge in a lawsuit against that judge.

OCGA 45-15-34 provides in part, as follows:

"The Department of Law is vested with complete

and exclusive authority and jurisdiction in all matters of law relating to the executive branch of the government and every department, office, institution, commission, committee, board, and other agency thereof." (Emphasis added.)

OCGA 45-15-30 provides in the first sentence:

"There is created a Department of Law with the Attorney General at the head thereof . . ."

There has been no showing or allegations that the Governor of Georgia directed the Attorney General to represent Eldridge and, even if the Governor had made such direction, it would be illegal under OCGA 45-15-3.

WHEN FEDERAL QUESTIONS WERE RAISED

Federal questions were first raised in the original complaint filed in the District Court.

REASONS WHY CERTIORARI SHOULD BE GRANTED

1.

The Attorney General did not become the attorney of record in this case until after the complaint had been filed in the U.S. District Court. Therefore, his representation of Eldridge could not be challenged in the State Court but must be challenged in this court. The opinion of the Eleventh Circuit is a final decision on this issue and is a proper subject for a petition for certiorari, even though the other issues

in the case are still before the Eleventh Circuit.

Since the actions of the Attorney General are illegal and in violation of the state constitution and the laws of Georgia relating to the Attorney General and the Department of Law, such improper and illegal actions can be challenged at any time. This is not a question of substantive law or procedural law which must await the determination of the other issues in the case.

Since the Attorney General has sought attorneys fees, he is in violation of a law which specifies that such action is a felony. That is a question which the Eleventh Circuit was entitled to consider immediately when it was brought to the attention of that court. Certiorari should be granted because the determination of the authority, standing

and powers of a state Attorney General is of vital interest to all states.

2.

There are other important reasons why a review or writ of certiorari should be granted. Even though the issues presented hereinabove do not comply completely with Rule 17 of this Court, said Rule does provide as follows:

> "A review or writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor."

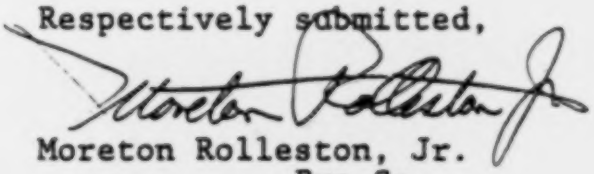
There is an urgent matter in Georgia for which the decision in this case would provide a solution.

The Attorney General of Georgia has filed suit against the Georgia State Personnel Board for allegedly violating Georgia's Open Meetings Act.

As a result of such filing, a complaint has been filed with the State Bar of Georgia against the Attorney General (who is the same Attorney General Bowers representing Eldridge). By statute, the State Bar of Georgia was established and placed under the supervision of the Supreme Court of Georgia. The Attorney General has taken the position that he is the lawyer for the people of the State of Georgia and is not subject to the rules of the State Bar of Georgia. The Attorney General has been defended and the State Bar of Georgia has been criticized extensively by the Atlanta Journal in editorals and have even questioned the standing of the Georgia Supreme Court to rule on the complaint filed against the Attorney General. The State District Attorneys have argued

in the case that they also, as "public lawyers", are not subject to the rules and regulations of the State Bar of Georgia. A ruling by this Court that the Attorney General is the lawyer for the Governor and Executive Branch would substantially refute the claims of the media, which are damaging to the State Bar of Georgia, and dispel the preception of unfair adminsitration of justice in this state.

Respectively submitted,



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APPENDIX

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 87-8553

MORETON ROLLESTON, JR.,

Plaintiff-Appellant-
Cross-appellee,

versus

JUDGE FRANK M. ELDRIDGE,

Defendant-Appellee-
Cross-appellant.

On Appeal from the United States
District Court for the Northern
District of Georgia

O R D E R:

Appellant-Cross-appellee's motion to disqualify appellee's counsel is DENIED.

/s/ R. LANIER ANDERSON
United States Circuit Judge

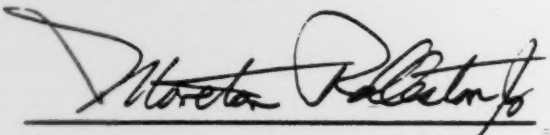
U.S. Court of Appeals
Eleventh Circuit
Filed - Nov.17,1987
Miguel J. Cortez, Clerk

CERTIFICATE OF SERVICE

This is to certify that I have this day served copies of the foregoing "Petition for a Writ of Certiorari to U.S. Court of Appeals for the Eleventh Circuit upon counsel for all parties by placing three copies in the United States Mail, postage prepaid, properly addressed, as follows:

Ms. Kathryn Allen
132 State Judicial Bldg.
Atlanta, Georgia 30334

This 5th day of February, 1988.



Moreton Rolleston, Jr.